

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

FRANK TADDEO, et al.,

Plaintiff(s),

vs.

AMERICAN INVSCO CORPORATION, et al.,

Defendant(s).

Case No. 2:12-cv-01110-KJD-NJK

ORDER DENYING MOTION TO  
 COMPEL  
 (Docket No. 40)

Pending before the Court is Plaintiffs' motion to compel discovery from Defendant Koval Flamingo, LLC ("Defendant"). Docket No. 40. Having considered the materials submitted and for the reasons explained below, the Court hereby **DENIES without prejudice** the motion to compel.

The Court's initial inquiry regarding the motion to compel is whether the movant made adequate meet and confer efforts. Federal Rule of Civil Procedure 37(a)(2)(B) requires that a "party bringing a motion to compel discovery must include with the motion a certification that the movant has in good faith conferred or attempted to confer with the nonresponsive party." Similarly, Local Rule 26-7(b) provides that "[d]iscovery motions will not be considered unless a statement of the movant is attached thereto certifying that, after personal consultation and sincere effort to do so, the parties have not been able to resolve the matter without Court action."

Judges in this District have previously held that "personal consultation" means the movant must "personally engage in two-way communication with the nonresponding party to meaningfully discuss each contested discovery dispute in a genuine effort to avoid judicial intervention."

1 *ShuffleMaster, Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166, 171 (D. Nev. 1996). The  
2 consultation obligation “promote[s] a frank exchange between counsel to resolve issues by  
3 agreement or to at least narrow and focus matters in controversy before judicial resolution is  
4 sought.” *Nevada Power v. Monsanto*, 151 F.R.D. 118, 120 (D.Nev.1993). To meet this obligation,  
5 parties must “treat the informal negotiation process as a substitute for, and not simply a formal  
6 prerequisite to, judicial review of discovery disputes.” *Id.* This is done when the parties “present to  
7 each other the merits of their respective positions with the same candor, specificity, and support  
8 during the informal negotiations as during the briefing of discovery motions.” *Id.* To ensure that  
9 parties comply with these requirements, movants must file certifications that “accurately and  
10 specifically convey to the court who, where, how, and when the respective parties attempted to  
11 personally resolve the discovery dispute.” *ShuffleMaster*, 170 F.R.D. at 170 (emphasis added).

12 The certification with the pending motion to compel states that counsel spoke about  
13 outstanding discovery on March 6, 2013 and that Defendant’s counsel requested two days to get  
14 back in touch with Plaintiffs’ counsel about the issues. *See Shinn Decl.* at ¶¶ 8-9. The certification  
15 provides further that Defendant’s counsel did not respond within those two days. There is no  
16 indication that Plaintiffs’ counsel contacted Defendant’s counsel after that two-day deadline passed  
17 in an effort to discuss whether the filing of this motion was necessary. Nor does the certification  
18 specifically convey the details of the March 6, 2013, conference sufficiently for the Court to  
19 determine whether that conference satisfied the personal consultation requirement outlined above.

20 Accordingly, the Motion to Compel is hereby **DENIED** without prejudice.

21 IT IS SO ORDERED.

22  
23 DATED: March 26, 2013

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26 NANCY J. KOPPE  
27 United States Magistrate Judge  
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